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6 Attorney for Brian Tucker

7  
8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 BRIAN TUCKER,

14 Defendant.  
15

Case No. 2:19-cv-00427-GMN-EJY

**STIPULATION TO RESOLVE  
DEFENDANT TUCKER'S RULE  
41(G) MOTION AND VACATE  
STATUS HEARING**

16 Assistant United States Attorney John Childress, counsel for the United States of  
17 America, and Assistant Federal Public Defender Sylvia A. Irvin, counsel for Defendant Brian  
18 Tucker, stipulate and agree as follows:

19 1. Defendant Tucker was indicted for Conspiracy to Possess with the Intent to  
20 Distribute and to Distribute 500 Grams or more of a Methamphetamine mixture, in violation  
21 of 21 U.S.C. §§ 846 and 851, in two cases in the Southern District of Indiana, Evansville  
22 Division, Case Nos. 3:14-cr-52-RLY-WGH and 3:15-cr-3-RLY-CMM.

23 2. Following the Defendant's convictions in both cases, the District Court in  
24 Indiana ordered the Defendant's interest in \$7,174.00 U.S. Currency and a 2013 Dodge  
25 Charger forfeited, but did not address the forfeiture of the following property to the United  
26 States:

1                   \$14,960.00 United States Currency  
2                   (Asset Identification Number: 15-DEA-608142)

3               3.       On March 11, 2019, the Defendant filed his "Motion for Order Directing  
4       Return of Seized Property," in which he has requested the return of \$14,960.00 United States  
5       Currency that was seized from him at the time of his arrest on January 12, 2015. Case No.  
6       3:14-cr-52-RLY-WGH, ECF No. 171.

7               4.       The Defendant filed a duplicate Motion for Order Directing Return of Seized  
8       Property in this District of Nevada on December 26, 2018. Case No. 2:15-mj-00012-GFW-1,  
9       ECF No. 10. The motion was filed under the Magistrate Judge Case Number related to the  
10      Defendant's District of Nevada Rule 5 arrest on the Southern District of Indiana Indictment.  
11      See Case No. 2:15-mj-00012-GFW-1. A civil case was opened on March 12, 2019, under the  
12      instant District of Nevada Case No. 2:19-cv-00427-GMN-GWF.  
13

14              4.       The motions in both jurisdictions pertain to the same property, \$14,960.00 in  
15      United States Currency seized from the Defendant at the time of his arrest.  
16

17              5.       In the Southern District of Indiana Judgment, the Court ordered the Defendant  
18      to pay a \$100 Special Assessment and a \$2,000 Fine in each of the two Southern District of  
19      Indiana case numbers, for a total of \$4,200.00 owed the Court. Although the Defendant has  
20      made some payments towards this debt, as of June 13, 2019, he still owes \$4,050.00.  
21

22              6.       The United States and Defendant have agreed to settle the Rule 41(g) motion  
23      in these case without further litigation, and hereby advise the Court of their agreement that the  
24      United States will release to Clerk of the Court, Southern District of Indiana, 46 East Ohio  
25      Street, Suite 105, Indianapolis, Indiana 46204, the amount of \$4,050.00, to be applied to  
26

1 Defendant Tucker's remaining balance. The United States also will provide a letter from the  
2 United States Attorney's Office acknowledging that payment has been received toward the  
3 Fine and Special Assessment so that the Defendant can provide documentation to his Bureau  
4 of Prisons Case Manager that his debt has been satisfied.  
5

6 7. The United States and Defendant Tucker also agree that the remaining amount  
7 of \$10,910.00 will be deposited into the Defendant Tucker's Bureau of Prisons Trust Fund  
8 account.<sup>1</sup>  
9

10 8. Defendant Tucker represents that this Stipulation and Agreement is freely and  
11 voluntarily entered into without any degree of duress or compulsion whatsoever and agrees  
12 unconditionally to release, hold harmless, acquit, and discharge the United States and any  
13 agents, servants, and employees of the United States, or any state or local law enforcement  
14 agency, acting in their individual or official capacities, from any and all claims by Defendant  
15 Tucker and his successors, assignees, agents and employees from any and all claims,  
16 demands, causes of actions or suits, agreements, deposited sums, judgments, damages, losses  
17 of service, expenses of whatever kind and description, and wheresoever situated, that might  
18 now exist or hereafter exist by reason of or arising from the incidents or circumstances giving  
19 rise to the seizure and custody of, and proceedings involving the forfeiture of, the subject  
20 property.  
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24 <sup>1</sup> Defendant's counsel in this District is an Assistant Federal Public Defender who  
25 sought limited appointment for the sole purpose of helping Defendant Tucker arrange his court  
26 appearance by telephone in the District of Nevada. Defendant Tucker was previously  
represented by her office for the Rule 5 appearances. AFPD Irvin is not authorized to accept  
funds on Defendant Tucker's behalf.

1           9.       Defendant Tucker agrees that there was reasonable cause for the seizure of the  
2 \$14,960.00 U.S. Currency, as the term "reasonable cause" is used in 28 U.S.C. § 2465, and  
3 agrees to release and hold harmless the United States, any and all agents, officers, and  
4 employees of the United States acting in their individual or official capacities, from any and  
5 all claims, including but not limited to its seizure, custody, security, and maintenance.  
6

7           10.      Defendant Tucker understands and agrees that by entering into this Stipulation,  
8 he waives any right to further litigate against the United States his interest in the subject  
9 property, including through any petition for remission or mitigation of the forfeiture.  
10

11           11.      Defendant Tucker acknowledges by entering into this Stipulation that the  
12 United States promptly recognized his Rule 41(g) motion and by so doing did not cause him  
13 to incur additional costs or fees.

14           12.      Defendant Tucker and the United States each agree to bear their own litigation  
15 expenses, including, but not limited to, attorneys' fees. Defendant Tucker further waives any  
16 and all claims or rights that he may have pursuant to 28 U.S.C. § 2412 (the Equal Access to  
17 Justice Act) for attorneys' fees or other costs it incurred arising out of this forfeiture action.  
18

19           13.      Unless specifically directed by order of the Court, Defendant Tucker is hereby  
20 excused and relieved from further participation in the ancillary forfeiture proceedings.

21           14.      The terms of this Agreement shall be subject to approval by the United States  
22 District Court and any violation of any terms or conditions shall be construed as a violation of  
23 an order of the Court.  
24  
25  
26

15. The persons signing this Agreement warrant and represent that they possess full authority to bind the persons and entities on whose behalf they are signing to the terms of the settlement.

16. Because this Stipulation resolves the pending Rule 41(g) Motion, the parties agree that the status hearing is no longer needed and respectfully ask the Court to vacate the hearing scheduled for August 16, 2019, at 10:30a.m.

DATED this 15th day of August, 2019.

RENE L. VALLADARES  
Federal Public Defender  
District of Nevada

JOSH J. MINKLER  
United States Attorney  
Southern District of Indiana

By: Sylvia A. Irvin  
SYLVIA A.  
IRVIN  
Assistant Federal Public Defender

By: John E. Childress  
JOHN E. CHILDRESS  
Deputy Chief, Civil Division

BRIAN TUCKER  
Defendant

By: Brian Walker  
Date: 8-15-19

## ORDER

**IT IS HEREBY ORDERED** that the above Stipulation and Motion to Vacate Status Hearing, (ECF No. 17), is **GRANTED**.

**IT IS FURTHER ORDERED** that the Clerk of Court is directed to close this case.

**DATED** this 15 day of August, 2019.

Gloria M. Navarro, Chief Judge  
UNITED STATES DISTRICT COURT